

AMENDED IN ASSEMBLY MAY 7, 2007

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 369

Introduced by Assembly Member Solorio
(Coauthors: Assembly Members Bass, DeVore, Dymally, Gaines,
Galgiani, Horton, Maze, and Spitzer)

February 14, 2007

An act to amend Sections 11105.04 and 11170 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 369, as amended, Solorio. Child abuse reporting.

Existing law requires the Department of Justice to maintain an index of all reports of child abuse and severe neglect submitted by agencies mandated to make those reports. Existing law requires the Department of Justice to make relevant information contained in the index available to specified law enforcement agencies, county welfare departments, and other agencies that are conducting a child abuse investigation.

This bill would require the Department of Justice to make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, information contained in the index regarding known or suspected child abuse by the applicant.

Existing law authorizes a designated Court Appointed Special Advocate program to submit to the Department of Justice fingerprint images and related information of employment and volunteer candidates

for the purpose of obtaining information as to the existence and nature of any record of state- or federal-level convictions or state- or federal-level arrests, as specified.

This bill would revise that provision to also authorize a designated Court Appointed Special Advocate program to submit to the Department of Justice fingerprint images and related information of employment and volunteer candidates for the purpose of obtaining information as to the existence and nature of child abuse investigations contained in the Child Abuse Central Index.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11105.04 of the Penal Code is amended
2 to read:

3 11105.04. (a) A designated Court Appointed Special Advocate
4 (CASA) program may submit to the Department of Justice
5 fingerprint images and related information of employment and
6 volunteer candidates for the purpose of obtaining information as
7 to the existence and nature of any record of child abuse
8 investigations contained in the Child Abuse Central Index, state-
9 or federal-level convictions, or state- or federal-level arrests for
10 which the department establishes that the applicant was released
11 on bail or on his or her own recognizance pending trial. Requests
12 for federal-level criminal offender record information received by
13 the department pursuant to this section shall be forwarded to the
14 Federal Bureau of Investigation by the department.

15 (b) When requesting state-level criminal offender record
16 information pursuant to this section, the designated CASA program
17 shall request subsequent arrest notification, pursuant to Section
18 11105.2 of the Penal Code, for all employment and volunteer
19 candidates.

20 (c) The department shall respond to the designated CASA
21 program with information as delineated in subdivision (p) of
22 Section 11105 of the Penal Code.

23 (d) The department shall charge a fee sufficient to cover the
24 cost of processing the requests for state- and federal-level criminal
25 offender record information.

(e) For purposes of this section, a designated CASA program is a local court-appointed special advocate program that has adopted and adheres to the guidelines established by the Judicial Council and which has been designated by the local presiding juvenile court judge to recruit, screen, select, train, supervise, and support lay volunteers to be appointed by the court to help define the best interests of children in juvenile court dependency and wardship proceedings. For purposes of this section, there shall be only one designated CASA program in each California county.

(f) This section shall become operative on July 1, 2004.

SEC. 2. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the

1 reporting medical practitioner, child custodian, guardian ad litem
2 appointed under Section 326, or counsel appointed under Section
3 317 or 318 of the Welfare and Institutions Code, or the appropriate
4 licensing agency, if he or she is treating or investigating a case of
5 known or suspected child abuse or severe neglect.

6 (2) When a report is made pursuant to subdivision (a) of Section
7 11166, or Section 11166.05, the investigating agency, upon
8 completion of the investigation or after there has been a final
9 disposition in the matter, shall inform the person required or
10 authorized to report, of the results of the investigation and of any
11 action the agency is taking with regard to the child or family.

12 (3) The Department of Justice shall make available to a law
13 enforcement agency, county welfare department, or county
14 probation department that is conducting a child abuse investigation,
15 relevant information contained in the index.

16 (4) The department shall make available to the State Department
17 of Social Services or to any county licensing agency that has
18 contracted with the state for the performance of licensing duties,
19 information regarding a known or suspected child abuser
20 maintained pursuant to this section and subdivision (a) of Section
21 11169 concerning any person who is an applicant for licensure or
22 any adult who resides or is employed in the home of an applicant
23 for licensure or who is an applicant for employment in a position
24 having supervisory or disciplinary power over a child or children,
25 or who will provide 24-hour care for a child or children in a
26 residential home or facility, pursuant to Section 1522.1 or 1596.877
27 of the Health and Safety Code, or Section 8714, 8802, 8912, or
28 9000 of the Family Code.

29 (5) The Department of Justice shall make available to a Court
30 Appointed Special Advocate program that is conducting a
31 background investigation of an applicant seeking employment
32 with the program or a volunteer position as a Court Appointed
33 Special Advocate, as defined in Section 101 of the Welfare and
34 Institutions Code, information contained in the index regarding
35 known or suspected child abuse by the applicant.

36 (6) For purposes of child death review, the Department of Justice
37 shall make available to the chairperson, or the chairperson's
38 designee, for each county child death review team, or the State
39 Child Death Review Council, information maintained in the Child
40 Abuse Central Index pursuant to subdivision (a) of Section 11170

1 relating to the death of one or more children and any prior child
2 abuse or neglect investigation reports maintained involving the
3 same victims, siblings, or suspects. Local child death review teams
4 may share any relevant information regarding case reviews
5 involving child death with other child death review teams.

6 (7) The department shall make available to investigative
7 agencies or probation officers, or court investigators acting
8 pursuant to Section 1513 of the Probate Code, responsible for
9 placing children or assessing the possible placement of children
10 pursuant to Article 6 (commencing with Section 300), Article 7
11 (commencing with Section 305), Article 10 (commencing with
12 Section 360), or Article 14 (commencing with Section 601) of
13 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
14 Code, Article 2 (commencing with Section 1510) or Article 3
15 (commencing with Section 1540) of Chapter 1 of Part 2 of Division
16 4 of the Probate Code, information regarding a known or suspected
17 child abuser contained in the index concerning any adult residing
18 in the home where the child may be placed, when this information
19 is requested for purposes of ensuring that the placement is in the
20 best interests of the child. Upon receipt of relevant information
21 concerning child abuse or neglect investigation reports contained
22 in the index from the Department of Justice pursuant to this
23 subdivision, the agency or court investigator shall notify, in writing,
24 the person listed in the Child Abuse Central Index that he or she
25 is in the index. The notification shall include the name of the
26 reporting agency and the date of the report.

27 (8) The Department of Justice shall make available to a
28 government agency conducting a background investigation
29 pursuant to Section 1031 of the Government Code of an applicant
30 seeking employment as a peace officer, as defined in Section 830,
31 information regarding a known or suspected child abuser
32 maintained pursuant to this section concerning the applicant.

33 (9) (A) Persons or agencies, as specified in subdivision (b), if
34 investigating a case of known or suspected child abuse or neglect,
35 or the State Department of Social Services or any county licensing
36 agency pursuant to paragraph (4), or a Court Appointed Special
37 Advocate conducting a background investigation for employment
38 or volunteer candidates pursuant to paragraph (5), or an
39 investigative agency, probation officer, or court investigator
40 responsible for placing children or assessing the possible placement

1 of children pursuant to paragraph (7), or a government agency
2 conducting a background investigation of an applicant seeking
3 employment as a peace officer pursuant to paragraph (8), to whom
4 disclosure of any information maintained pursuant to subdivision
5 (a) is authorized, are responsible for obtaining the original
6 investigative report from the reporting agency, and for drawing
7 independent conclusions regarding the quality of the evidence
8 disclosed, and its sufficiency for making decisions regarding
9 investigation, prosecution, licensing, placement of a child,
10 *employment or volunteer positions with a CASA program*, or
11 employment as a peace officer.

12 (B) If Child Abuse Central Index information is requested by
13 an agency for the temporary placement of a child in an emergency
14 situation pursuant to Article 7 (commencing with Section 305) of
15 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
16 Code, the department is exempt from the requirements of Section
17 1798.18 of the Civil Code if compliance would cause a delay in
18 providing an expedited response to the agency's inquiry and if
19 further delay in placement may be detrimental to the child.

20 (10) (A) Whenever information contained in the Department
21 of Justice files is furnished as the result of an application for
22 employment or licensing pursuant to paragraph (4), (5), or (8), the
23 Department of Justice may charge the person or entity making the
24 request a fee. The fee shall not exceed the reasonable costs to the
25 department of providing the information. The only increase shall
26 be at a rate not to exceed the legislatively approved cost-of-living
27 adjustment for the department. In no case shall the fee exceed
28 fifteen dollars (\$15).

29 (B) All moneys received by the department pursuant to this
30 section to process trustline applications for purposes of Chapter
31 3.35 (commencing with Section 1596.60) of Division 2 of the
32 Health and Safety Code shall be deposited in a special account in
33 the General Fund that is hereby established and named the
34 Department of Justice Child Abuse Fund. Moneys in the fund shall
35 be available, upon appropriation by the Legislature, for expenditure
36 by the department to offset the costs incurred to process trustline
37 automated child abuse or neglect system checks pursuant to this
38 section.

39 (C) All moneys, other than that described in subparagraph (B),
40 received by the department pursuant to this paragraph shall be

1 deposited in a special account in the General Fund which is hereby
2 created and named the Department of Justice Sexual Habitual
3 Offender Fund. The funds shall be available, upon appropriation
4 by the Legislature, for expenditure by the department to offset the
5 costs incurred pursuant to Chapter 9.5 (commencing with Section
6 13885) and Chapter 10 (commencing with Section 13890) of Title
7 6 of Part 4, and the DNA and Forensic Identification Data Base
8 and Data Bank Act of 1998 (Chapter 6 (commencing with Section
9 295) of Title 9 of Part 1), and for maintenance and improvements
10 to the statewide Sexual Habitual Offender Program and the DNA
11 offender identification file (CAL-DNA) authorized by Chapter 9.5
12 (commencing with Section 13885) of Title 6 of Part 4 and the
13 DNA and Forensic Identification Data Base and Data Bank Act
14 of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of
15 Part 1).

16 (c) The Department of Justice shall make available to any agency
17 responsible for placing children pursuant to Article 7 (commencing
18 with Section 305) of Chapter 2 of Part 1 of Division 2 of the
19 Welfare and Institutions Code, upon request, relevant information
20 concerning child abuse or neglect reports contained in the index,
21 when making a placement with a responsible relative pursuant to
22 Sections 281.5, 305, and 361.3 of the Welfare and Institutions
23 Code. Upon receipt of relevant information concerning child abuse
24 or neglect reports contained in the index from the Department of
25 Justice pursuant to this subdivision, the agency shall also notify
26 in writing the person listed in the Child Abuse Central Index that
27 he or she is in the index. The notification shall include the location
28 of the original investigative report and the submitting agency. The
29 notification shall be submitted to the person listed at the same time
30 that all other parties are notified of the information, and no later
31 than the actual judicial proceeding that determines placement.

32 If Child Abuse Central Index information is requested by an
33 agency for the placement of a child with a responsible relative in
34 an emergency situation pursuant to Article 7 (commencing with
35 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
36 and Institutions Code, the department is exempt from the
37 requirements of Section 1798.18 of the Civil Code if compliance
38 would cause a delay in providing an expedited response to the
39 child protective agency's inquiry and if further delay in placement
40 may be detrimental to the child.

1 (d) The department shall make available any information
2 maintained pursuant to subdivision (a) to out-of-state law
3 enforcement agencies conducting investigations of known or
4 suspected child abuse or neglect only when an agency makes the
5 request for information in writing and on official letterhead,
6 identifying the suspected abuser or victim by name. The request
7 shall be signed by the department supervisor of the requesting law
8 enforcement agency. The written requests shall cite the out-of-state
9 statute or interstate compact provision that requires that the
10 information contained within these reports shall be disclosed only
11 to law enforcement, prosecutorial entities, or multidisciplinary
12 investigative teams, and shall cite the criminal penalties for
13 unlawful disclosure of any confidential information provided by
14 the requesting state or the applicable interstate compact provision.
15 In the absence of a specified out-of-state statute or interstate
16 compact provision that requires that the information contained
17 within these reports shall be disclosed only to law enforcement,
18 prosecutorial entities, or multidisciplinary investigative teams, and
19 criminal penalties equivalent to the penalties in California for
20 unlawful disclosure, access shall be denied.

21 (e) (1) Any person may determine if he or she is listed in the
22 Child Abuse Central Index by making a request in writing to the
23 Department of Justice. The request shall be notarized and include
24 the person's name, address, date of birth, and either a social
25 security number or a California identification number. Upon receipt
26 of a notarized request, the Department of Justice shall make
27 available to the requesting person information identifying the date
28 of the report and the submitting agency. The requesting person is
29 responsible for obtaining the investigative report from the
30 submitting agency pursuant to paragraph (11) of subdivision (b)
31 of Section 11167.5.

32 (2) No person or agency shall require or request another person
33 to furnish a copy of a record concerning himself or herself, or
34 notification that a record concerning himself or herself exists or
35 does not exist, pursuant to paragraph (1) of this subdivision.

36 (f) If a person is listed in the Child Abuse Central Index only
37 as a victim of child abuse or neglect, and that person is 18 years
38 of age or older, that person may have his or her name removed
39 from the index by making a written request to the Department of

- 1 Justice. The request shall be notarized and include the person's
- 2 name, address, social security number, and date of birth.

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